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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 3, 1999

Magalie R. Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20554

Re: **Ex Parte, CC Docket Nos. 96-98, 95-185**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, MGC Communications, Inc. ("MGC") submits this notice, in the above-captioned docketed proceedings, of an oral and written *ex parte* made on September 3, 1999 with Commissioner Ness. The following persons were present and the written *ex parte* is attached to this letter:

1. September 3, 1999: Commissioner Ness and her legal advisor Linda Kinney. Additionally, representatives from SBC and Rythms were present.

The presentation was made by Scott A. Sarem, Assistant Vice President of Regulatory Affairs from MGC and Ross A. Buntrock of Kelley Drye and Warren. During the meeting the parties discussed MGC's need for unbundled local loops with no restrictions. The proposed unbundling of all local loops were detailed in presentation materials and include information regarding the following topic:

- Access to unbundled loops, including loops located behind remote switches, access nodes, integrated digital loop carriers, etc. as well as Sub-loop unbundling and the ILECs' ability to provision sub-loops.

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Pursuant to Sections 1.1206(b)(2), an original and two copies of this *ex parte* notification and the accompanying presentation materials are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Sarem", with a long horizontal flourish extending to the right.

Scott A. Sarem
Asst. Vice president, Regulatory Affairs
MGC Communications, Inc.
(702) 310-4406

Enclosure

cc: Kent Heyman
John Boersma

WHO IS MGC COMMUNICATIONS INC.?

- Facilities based CLEC providing competitive local voice and data services to Residential and Small Business Consumers in CA, NV, IL, GA, and FL. Expanding Network in 20 new markets.
- Collocated in approximately 250 ILEC Central Offices in Five States representing approximately 12 million addressable lines.
- Provide ubiquitous service through the leasing of unbundled loops from Incumbent Local Exchange Carriers
- Approximately 100,000 access lines provisioned on MGC switches.
- Service offerings to Residential and Small Business Consumers in the manner contemplated by the Telecommunications Act of 1996.
- Current Customer base is approximately 40% Residential and 60% Business.
- One of the Only CLECs providing facilities based residential service.
- Raised over \$440 million dollars through debt and equity to deploy a facilities based local network as permitted by the Telecommunications Act of 1996.

LOOPS

Loops served by remote switches, pair-gain devices, or digital loop carriers

MGC provides facilities based voice and data services predominantly to the areas that surround larger metropolitan areas (“The suburban urban ring”). Essentially, MGC provides a telecommunications choice to the residential and small business consumers located in America’s suburbs. A by-product of providing service to areas other than the main downtown or commercial centers is that development is fairly recent.

Consequently, rate centers are often either rural or formerly rural. In an effort to provide cost-effective service to rural areas, most ILECs have deployed loops served by remote switches, pair-gain devices, and digital loop carriers. Generally, the ILEC serve customers out of remote terminals through a digital rather than an analog loop. CLECs like MGC cannot provide service to those customers served by digital loops unless the ILEC provides translation equipment that allows the CLEC to provision the service from a device other than the remote switch, pair-gain device, or digital loop carrier.

Curiously, not all ILECs allow CLECs to provide service to ILEC customers served by digital loops. Therefore, the Commission must act to include an all-encompassing definition of loops so that ILECs may not game the regulatory regime and deny CLECs access to all ILEC customers under the auspices of a technical loophole.

Not all ILECs treat digital loops the same. For instance, Pacific Bell and Sprint will provide MGC with access to their loops without regard to whether the loop is served by a remote switch, pair-gain device, or digital loop carrier (collectively referred to as “remotes.”). Rather, Pacific Bell and Sprint will either rearrange facilities or provision a digital loop on a D-4 channel bank where MGC is collocated allowing MGC to provision

the loop off the channel bank. Sprint and Pacific Bell do not charge any additional amount for MGC to acquire a loop in this manner.

Ameritech and GTE, on the other hand, are less cooperative. In Ameritech territory in Illinois, MGC cannot serve any ILEC customer served by a digital loop without submitting a request to Ameritech for “special construction” of the loop. This special construction may cost as much as \$9,366.08 for one loop. Ameritech is not allowed to charge special construction in Michigan, where the Michigan Public Service Commission ruled that Ameritech cannot charge special construction charges for loops located behind remotes. In making its decision, the Michigan Public Service Commission reasoned that the Ameritech must treat competitors as it treats itself with regard to the provisioning of loops. As a result, in Michigan, Ameritech no longer charges a special construction fee for loops located behind remotes. However, in Illinois, Ameritech still attempts to charge CLECs like MGC a special construction charge for loops located behind remote terminals. Not only does this anticompetitive practice illustrate the need for national UNE standards, but also represents a barrier to entry for CLECs and in MGC’s case, limits the reach of competition. In fact, in certain areas, such as Naperville, Illinois, MGC is precluded from serving more than 50% of the consumers served by the Ameritech- Naperville central office because those customers are located behind remotes.

Until recently, GTE’s policies and procedures have been even more egregious. GTE not only limits MGC’s ability to provide competitive service to customers served by remotes, it does not notify MGC (in most cases) of its inability to serve a particular customer until the day the customer is scheduled to convert its service from GTE to

MGC. When MGC first complained of this issue to GTE, GTE's proposed solution to this inequity was to offer that MGC may purchase a D-4 channel bank (approximately \$34,000), collocate it in a remote terminal and then provide service to the customers MGC seeks to serve. Not only was this suggestion contrary to industry standards, it drastically increases the cost of customer acquisition. Therefore, GTE has effectively precluded MGC from competing for a certain class of GTE customer. MGC continued to escalate this issue with GTE for more than a year until GTE agreed to modify its policy. Rather than initially requiring MGC to purchase a D-4 channel bank (in every instance) from GTE, GTE will, when facilities are available, allow MGC to provision loops behind remotes when GTE has "spare facilities." However, if no facilities are available, MGC would still be required to purchase the D-4 channel bank as described above. While GTE is moving in the right direction, MGC still loses many prospective customers due to this issue.

The proliferation of loops located behind remotes acts as a barrier to competition and forecloses any opportunity for consumers who are served by those loops to benefit from the fruits of competition. Therefore, the Commission should include loops served by remote switches, pair-gain devices, or digital loop carriers in its definition of loops and must require the ILECs to provide these loops at parity.